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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,131	06/20/2001	F. David Stallworth	BS00-052	2467

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SCOTT P. ZIMMERMAN, PLLC
PO BOX 3822
CARY, NC 27519

EXAMINER

SHELEHEDA, JAMES R

ART UNIT	PAPER NUMBER
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2623

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09/28/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/884,131	Applicant(s) STALLWORTH, F. DAVID	
	Examiner James Sheleheda	Art Unit 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 30-43 is/are pending in the application.
- 4a) Of the above claim(s) 30-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 07/06/07 has been entered.

Response to Arguments

2. Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-7, 9-13 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schiller et al. (Schiller) (5,499,046) (of record) in view of Corts et al. (Corts) (US 2002/0141491 A1).

As to claim 1, Schiller discloses a system for delivering media content (see Figs. 1-3), comprising:

a producer producing content (programs produced at some local location; column 1, lines 40-52); and

a channel producer (scheduler/distribution station; column 4, line 62-column 5, line 9 and column 5, line 66-column 6, line 3) that receives the content (column 6, line 64-column 7, line 11), aggregates the content into a bundle of content, the bundle of content having a full schedule of programming (full day of programming for the channel; column 1, lines 53-59 and column 4, lines 18-45), the bundle of content having diverse subject matter (column 1, line 40-column 2, line 11).

While Schiller discloses nationally distributing the content to an audience within and outside of a specific type of geographic terrain (as the content is transmitting on nationally available channels, such as HBO, etc...; see column 4, lines 18-34 and Fig. 2) and the audience having an interest in the content (wherein the audience choosing to view the received channel; column 11, lines 41-50), he fails to specifically disclose wherein the content is related to the local geographic terrain and providing free advertising space in exchange for the produced content.

It was well known in the art to put related programming on a single channel, by collecting and compiling, that which may previously exist on several channels. The collection of specialized kinds of programming on a single channel is the basis of numerous programming channel formats such as Nickelodeon, CNN, the Science-Fiction Channel, the Family Channel, the Movie Channel, etc. Furthermore, the

particular aggregation of programs based upon geographic terrain is known in the art (ex. The Water Channel, The Sailing Channel). The selection of geographic terrain is merely another grouping of existing programming material, depending simply upon the desires of the broadcasters. Therefore, it would have been obvious to one of ordinary skill in the art to utilize content which is related to a specific type of geographic terrain.

Furthermore, nonfunctional descriptive material cannot render nonobvious an invention that would have otherwise been obvious. In re Ngai, ³⁶⁷ F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004) (combining printed instructions and an old product into a kit will not render the claimed invention nonobvious even if the instructions detail a new use for the product).³⁶⁷ Cf. In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability).

For example, if the prior art suggests storing a song on a disk, merely choosing a particular song to store on the disk would be presumed to be well within the level of ordinary skill in the art at the time the invention was made. The difference between the prior art and the claimed invention is simply a rearrangement of nonfunctional descriptive material.

(see MPEP at 2106, Section VI).

Additionally, in an analogous art, Corts discloses a content distribution system (Fig. 2) wherein the content distributor will provide free advertising space in exchange for the produced content (paragraph 322, Fig. 30) for the typical benefit of allowing the

content producers to directly barter for their desired needs and thereby reducing the financial outlay needed to assemble and produce the content channel.

Thus, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Schiller's system to include wherein the content is related to the local geographic terrain for the typical benefit of allowing the broadcaster to select and bundle the content as desired by viewers.

Additionally, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Schiller's system to include providing free advertising space in exchange for the produced content, as taught by Corts, for the typical benefit of allowing the content producers to directly barter for their desired needs and thereby reducing the financial outlay needed to assemble and produce the content channel.

As to claim 2, Schiller and Corts disclose a media provider in communication with the channel producer (headend; see Schiller at Figs. 1-3), wherein the channel producer transmits the bundle of content within and outside the specific type of geographic terrain (as the content is transmitting on nationally available channels, such as HBO, etc...; see Schiller at column 4, lines 18-34 and Fig. 2) by transmitting the bundle of content to the media provider (see Schiller at column 6, lines 46-64).

As to claim 3, Schiller and Corts disclose wherein the media provider is a cable television operator (see Schiller at column 3, lines 56-63).

As to claim 4, Schiller and Corts disclose wherein the media provider distributes the bundle of content to a national audience (nationally available channels, such as HBO, etc...; see Schiller at column 4, lines 18-34 and Fig. 2).

As to claim 5, Schiller and Corts disclose wherein the channel producer is a cable network (see Schiller at column 4, lines 5-18).

As to claim 6, see the rejection of claim 1 above.

As to claim 7, Schiller and Corts disclose wherein the channel producer produces additional programs related to the specific type of geographic terrain and includes the additional programs in the bundle of content (see Schiller at column 5, lines 10-18).

As to claim 9, Schiller and Corts disclose wherein the content is audio content and video content (see Schiller at column 3, lines 56-59), and the channel producer is a cable network (see Schiller at column 4, lines 5-18).

As to claim 10, Schiller and Corts disclose wherein the content is audio content, video content (see Schiller at column 3, lines 56-59) and data content (schedule data; see Schiller at column 4, line 62-column 5, line 8), and the channel producer is a computer network content provider (see Schiller at Figs. 1-3 and column 4, lines 5-18).

As to claim 11, Schiller discloses a method for delivering media content (see Figs. 1-3), comprising:

receiving locally produced content from a local producer (programs produced at some local location; column 1, lines 40-52);

aggregating the content into a bundle of content, the bundle of content having a full schedule of programming (full day of programming for the channel; column 1, lines 53-59 and column 4, lines 18-45), the bundle of content having diverse subject matter (column 1, line 40-column 2, line 11).

While Schiller discloses nationally distributing the content to an audience within and outside of a specific type of geographic terrain (as the content is transmitting on nationally available channels, such as HBO, etc...; see column 4, lines 18-34 and Fig. 2) and the audience having an interest in the content (wherein the audience choosing to view the received channel; column 11, lines 41-50), he fails to specifically disclose wherein the content is related to the local geographic terrain and providing free advertising space in exchange for the produced content.

It was well known in the art to put related programming on a single channel, by collecting and compiling, that which may previously exist on several channels. The collection of specialized kinds of programming on a single channel is the basis of numerous programming channel formats such as Nickelodeon, CNN, the Science-Fiction Channel, the Family Channel, the Movie Channel, etc. Furthermore, the particular aggregation of programs based upon geographic terrain is known in the art

(ex. The Water Channel, The Sailing Channel). The selection of geographic terrain is merely another grouping of existing programming material, depending simply upon the desires of the broadcasters. Therefore, it would have been obvious to one of ordinary skill in the art to utilize content which is related to a specific type of geographic terrain.

Furthermore, nonfunctional descriptive material cannot render nonobvious an invention that would have otherwise been obvious. In re Ngai, ³⁶⁷ F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004) (combining printed instructions and an old product into a kit will not render the claimed invention nonobvious even if the instructions detail a new use for the product).< Cf. In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability).

For example, if the prior art suggests storing a song on a disk, merely choosing a particular song to store on the disk would be presumed to be well within the level of ordinary skill in the art at the time the invention was made. The difference between the prior art and the claimed invention is simply a rearrangement of nonfunctional descriptive material.

(see MPEP at 2106, Section VI).

Additionally, in an analogous art, Corts discloses a content distribution system (Fig. 2) wherein the content distributor will provide free advertising space in exchange for the produced content (paragraph 322, Fig. 30) for the typical benefit of allowing the

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content producers to directly barter for their desired needs and thereby reducing the financial outlay needed to assemble and produce the content channel.

Thus, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Schiller's system to include wherein the content is related to the local geographic terrain for the typical benefit of allowing the broadcaster to select and bundle the content as desired by viewers.

Additionally, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Schiller's system to include providing free advertising space in exchange for the produced content, as taught by Corts, for the typical benefit of allowing the content producers to directly barter for their desired needs and thereby reducing the financial outlay needed to assemble and produce the content channel.

As to claim 12, Schiller and Corts disclose wherein the content is at least one of audio content and video content (see Schiller at column 3, lines 56-64).

As to claims 13 and 18, see the rejection of claim 11 above.

As to claim 15, Schiller and Corts disclose wherein the step of transmitting comprises delivering audio content and video content (see Schiller at column 3, lines 56-59) using a cable network (see Schiller at column 4, lines 5-18).

As to claim 16, Schiller and Corts disclose wherein the step of transmitting the bundle of content comprises delivering audio and video content (see Schiller at column 3, lines 56-59) from a cable network (see Schiller at column 4, lines 5-18) to a cable television operator (see Schiller at column 4, line 62-column 5, line 18), and wherein the cable television operator broadcasts the audio content and the video content (see Schiller at column 5, lines 25-31).

As to claim 17, Schiller and Corts disclose wherein the step of transmitting comprises transmitting audio content, video content (see Schiller at column 3, lines 56-59) and data content (schedule data; see Schiller at column 4, line 62-column 5, line 8) using a computer network content provider (see Schiller at Figs. 1-3 and column 4, lines 5-18).

5. Claims 8 and 14 rejected under 35 U.S.C. 103(a) as being unpatentable over Schiller and Corts as applied to claims 1 and 11 above, and further in view of Decinque (6,286,139) (of record).

As to claims 8 and 14, while Schiller and Corts disclose wherein the content is audio content (column 3, lines 56-63) and wherein the channel producer utilizes the Internet (column 4, lines 46-61), they fail to specifically disclose a website.

In an analogous art, Decinque discloses a distribution system (Fig. 1) wherein content is accessed and distributed via a website (column 4, lines 18-46) for the typical

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benefit of providing a simple web-based method of ordering and distributing content (column 1, lines 4-54).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Schiller and Corts' system to include a website, as taught by Decinque, for the typical benefit of providing a simple web-based method of ordering and distributing content.

Conclusion

6. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

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Signature: _____

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.


7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Sheleheda whose telephone number is (571) 272-7357. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

James Sheleheda
Patent Examiner
Art Unit 2623

JS


CHRIS KELLEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600